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Advisor (F&EA-II),
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg, (Old Minto Road),
New Delhi – 110 002

Subject: **Consultation Paper [No. 09/2014 dated July 31, 2014] on Definition of Revenue Base (AGR) for the Reckoning of Licence Fee and Spectrum Usage Charges**

Dear Sir,

This is with reference to the captioned Consultation Paper [No. 09/2014] released by Hon'ble Authority on July 31 2014.

AT&T Global Network Services India Private Limited ("AT&T") would like to respectfully submit its comments on the captioned consultation (enclosed as Annexure – I). Additionally, through our industry association "ACTO", we have also submitted comments / inputs on the captioned consultation which we fully support.

AT&T in India is licensed to provide National Long Distance (NLD), International Long Distance (ILD) and Internet Service Provider (ISP) services and began providing these services in 2007 and 2009 respectively.

We trust you will find our submissions in order.

Thanking you,

Respectfully submitted,
for **AT&T Global Network Services India Private Limited**

Naveen Tandon

Naveen Tandon
Authorised Signatory

Encl.: As above

Introduction

AT&T is pleased to submit its comments to the Telecom Regulatory Authority of India (TRAI) Consultation Paper No. 09/2014 dated 31st July 2014 titled 'Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges.

At the outset, we thank the Hon'ble Authority for bringing out the suo-motu consultation paper on such an important matter. This intervention by the authority is indeed timely and clarity on this issue is much awaited by the industry.

On the subject of current consultation, there have been numerous representations made by the industry in the past to the Hon'ble Authority. The request has been to consider reviewing the issue of defining the components of Adjusted Gross Revenue (AGR) for the purpose of levying license fee both in the context of current telecom licenses and the Unified License (UL).

TRAI in its recommendations on Unified License to DoT dated 16th April 2012 under clause 2.49 has stated -"***Regarding the revenue which shall be taken into account for calculating GR/AGR for levying of license fee, the Authority has not proposed any change in the definition of GR/AGR as the issue requires deeper study***". (Emphasis Supplied).

The current consultation paper has indeed paved the way for a deeper study on the various aspects of revenue base which has a direct impact on the growth of the telecom sector, viability of the telecom service providers leading to access & affordability at the hands of the consumers.

It is a widely recognized fact that the Telecom sector is a highly capital intensive and technology agnostic sector which has evolved successfully over a period of time. However, it is important that with the passage of time and evolution of technology the regulatory framework surrounding the telecom licenses should be updated accordingly. This need for review and updation is required not only from a technology stand point but also from financial viability & affordability stand point as well.

Pursuant to the series of reforms introduced by the Government including privatization & liberalization of the telecom sector, beginning 1994-95, the sector has done remarkably well in terms of revenue growth. However in order to ensure this growth trajectory remains viable & sustainable, it is very important that the definition of revenue which is subject to license fee payments should be aligned aptly with the emerging economic realities. The current definition of revenue has several anomalies which need to be corrected for an orderly growth of the sector.

AT&T would like to respectfully submit that the revenue which is subject to license fee should only cover the activities / services carried out on the strength of the underlying telecom license granted under section 4 of Indian Telegraph Act (ITA), 1885 or which can be directly attributable to the service permitted under the telecom license. Any revenue which has been derived from an activity which does not requires a telecom license should be excluded from the definition of Gross Revenue / Adjusted Gross Revenue for the purpose of levying license fee.

In this regard it is worth mentioning that TRAI had recommended in its recommendations dated 13th January 2005 that ***"AGR shall include only the revenue accrued out of telecom services and shall not include sale of capital goods, sale of handsets, dividend and interest earned on various deposits. To ensure that bundling of handsets with tariff schemes is not misused, the existing provision of tariff schemes with bundling to be made available to subscribers even without bundling, shall continue".***

A company is granted license to provide telecom services under section 4 of Indian Telegraph Act, 1885(ITA 1885). The extract from the Act is stated below:

4. Exclusive privilege in respect of telegraphs, and power to grant licenses.

(1) Within [India], the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]:

[Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-

(a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above [India], or Indian territorial waters], and

(b) of telegraphs other than wireless telegraphs within any part of [India].

(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of it its powers under the first proviso to sub-section (1).

***The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.]* (Emphasis Supplied)**

It is quite clear that the license is granted based on some terms and conditions (license agreement) and in lieu of some consideration (Entry fee, License Fee , BG requirements) to establish, maintain or work a telegraph within India. Therefore it is quite clear that the consideration and conditions all are interlinked to the activity of establishing, operating and maintaining a telegraph. If there is no grant of any such license, such conditions and considerations do not come into existence.

Therefore, there cannot be any condition under the license which is not linked to the license or telegraph. This applies to the revenue base as well. As a consequence, the consideration which is license fee cannot be charged on any activity which has not been carried out under the license granted under section 4 of ITA 1885.

In contrast, to compute the said consideration, the current definition of revenue base defined under all telecom licenses (issued under section 4 of ITA 1885) subjects all avenues of revenue (telecom and non-telecom) accrued to the licensee company to license fee payment.

In summary:

- The revenue accrued only from telecom services and accrued under the strength of the telecom license granted under section 4 of ITA 1885 needs to be considered for license fee payment purposes.

- The AGR definition should eliminate the issue of **multi stage assessment of license fee / double taxation or double/multiple levy** which is currently in vogue due to the current structure of GR/AGR. This severely impedes competition in the telecom sector especially the enterprise services and data sector. Therefore input cost (i.e. interconnection / IUC and bandwidth cost for voice and data respectively) should be allowed for deduction while calculating AGR.

- The license fee should be based on actual revenue of the service provider without any linkages to the concept of presumptive AGR. There should not be any presumptive AGR in the telecom sector as the concept itself is contrary to the principles of revenue sharing regime adopted in 1999. Presumptive AGR will entail taking the sector back to the pre 1999 era wherein irrespective of the fact whether service under the telecom license is commenced or not, revenue is accrued or challenges in roll out or getting statutory permissions were in place, still a fixed charge was to be paid by the licensee.

- The following should be excluded from the Gross Revenue to arrive at the AGR:

(i) Pass through charges like leased circuits, bandwidth charges, port charges etc. paid to other telecom service providers.

(ii) Charges from pure internet service, activation charges from pure internet subscribers

(iii) Revenues / Profits / Gains which do not accrue from telecom services should not form a part of GR/AGR, such as:

- Foreign Exchange Gains (including set off for losses on account of foreign exchange fluctuations)
- Income from Dividend
- Other Interest Income
- Interest on other than refundable security deposits received from the customer,
- Capital Gains on account of profit on sale of assets, immovable property, securities, warrants or debt instruments, other items of fixed assets
- Exclusion of Recovery of Bad Debts , Waivers , Discounts &
- Reversal of Provision & Vendor Credits
- Income from other Property Rent

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- Income from Sale / lease of passive infrastructure like towers, dark fibres, etc. – is a reduction of cost, of that portion of assets which are not used by the licensee to provide the license services.
- Sale of any kind of Customer Premise Equipment (CPE)
- Insurance claims
- Payments received on behalf of third party (reimbursement).
- Receipts from USO Fund.
- Other income including Miscellaneous Income not derived on the strength of the underlying telecom license

AT&T operates in the Enterprise and Data Services space of the Indian Telecom Sector. This sector has been identified as the segment for ushering in the next wave of telecom revolution. The NTP 2012 has also specifically laid stress on formulating suitable policies for this sector which will fuel growth and attract investments. The issue relating to GR/AGR has a direct bearing on the financial viability as well as the competiveness of the Enterprise and Data sector as a whole.

It is important that the previous aberration that exists in the current licenses on the issue definition of GR and AGR needs to be reviewed and addressed in a manner which leads to the orderly growth of Telecom Sector especially the Enterprise and Data Services sector.

Accordingly the definition of GR / AGR for payment of license fee needs to be reviewed to ensure level playing field amongst the service providers. The present definition of GR and AGR subjects all avenues of revenue (telecom and non-telecom) or gains or profits which are not in the nature of revenue per se accrued to the licensee company to license fee. The permissible deductions are restricted only to voice based pass through charges (interconnection), service and sales tax paid. We request that the Licenses (current and future) should consider revenues accrued only on the strength of the telecom license for license fee payment purposes.

We present below a critical matter which needs to be addressed under the ambit of current consultation.

ISSUE OF DOUBLE TAXATION NEEDS TO BE ADDRESSED – SEVERLY IMPEDES COMPETITION AND AFFORDABILITY

Interconnection cost to be deducted from GR to arrive at AGR should also consider cost/charges paid for as input towards bandwidth / leased line charges which forms an integral part of data services. This will eliminate the issue of multi stage assessment of license fee leading to double taxation which is currently in vogue and severely impedes competition in the sector especially the Enterprise and Data Services Sector. Therefore such input cost (i.e., interconnection / IUC and bandwidth cost for voice data respectively) should be allowed for deduction while calculating AGR.

Presently TSPs are subject to double assessment of license fee as input costs i.e., charges relating to bandwidth cost, are not deductible from Gross Revenue to arrive at the Adjusted Gross Revenue (AGR) on which license fee is payable. These costs already include the license fee component as part of the overall pricing.

These input costs / charges which are paid by one TSP to another TSP are treated as revenue and costs at the hands of the carriers resulting in double assessment of license fee on the same revenue.

Double Taxation results in Multi Stage / Double Assessment of License Fee on the revenue of ILDOs and NLDOs who provide data services under their license. They are not allowed to claim deduction of the costs of telecom resources procured from other TSP, in terms of bandwidth which is integral part of telecom resource used to provide services.

The double taxation incidence has a direct bearing on the customer end pricing, making this essential resource more expensive in this segment. In addition, it is also impacting competition in this sector and affecting our businesses and making the services / products relatively un-competitive in this present assessment regime.

The bandwidth forms a critical infrastructure component for providing data services. Carriers not only create bandwidth infrastructure for providing services, the same infrastructure resource is also leased to other carriers as a telecom resource which enables them to provide final services to end user under their respective licenses. The revenue accrued from providing such services are subject to 8% license fee payment. However while arriving at the Adjusted Gross Revenue (AGR) for license fee payment purposes, such infrastructure resource cost is not allowed as a valid deduction and is therefore subject to license fee payment. As a result of which long distance carriers pay license fee on multiple occasions on the same input bandwidth or infrastructure cost resulting in a cascading effect in terms of license fee cost incidence.

Enterprise and Data Services like any other telecom services are needed to be made affordable, in this era of global competition. Infrastructure creation should be recognised and incentivised by allowing the underlying costs as a valid deduction from GR. Since the infrastructure is the basic resource and remains the same irrespective of its utilisation amongst carriers, the same should not be taxed in terms of license fee. Instead the telecom services provided to the end users on the said infrastructure only should be subject to license fee.

Infrastructure resource development needs to be encouraged but it is needed to be ensured that:

a) Duplication of resources are avoided

b) Optimally utilised (amongst TSPs)

c) Should not be artificially taxed (licensed fee) at par with services.

d) Incentivised by allowing carriers to treat its cost as a valid deduction from GR for license fee payment purposes irrespective of the fact as to who creates it. As more the infrastructure is shared the more it will be optimally utilised.

We would like to draw the attention of Hon'ble Authority to the specific recommendation made in para 2.130 (6.19) of the recommendations dated May 11, 2010 and February 8, 2011 on "Spectrum Management and Licensing Framework" with respect to Double Taxation. The relevant portion of the recommendations and comments of DoT are reproduced below for ready reference:

Double Taxation

Para No.	TRAI's Recommendations	DoT's Comments on the recommendations for TRAI's Reconsideration
2.130 (6.19)	The Authority would however like the Government to examine the issues of double taxation, if any.	TRAI may recommend the issues involved with regard to double taxation, if any, considering the need for revenue neutrality and outsourcing model being used by various operators

Hon'ble Authority will appreciate that bandwidth forms a critical infrastructure component for providing Enterprise Data Services. Long Distance Carriers not only create bandwidth infrastructure for providing services, the same infrastructure resource is also leased to other Carriers as a telecom resource which enable them to provide final services/products to end users under their respective license.

Enterprise services like any other telecom services are needed to be made affordable, in this era of global competition. Infrastructure creation should be recognised and incentivised by allowing the underlying costs as a valid deduction from AGR. Since the infrastructure is the basic resource and remains the same irrespective of its utilisation amongst Carriers, the same should not be taxed in terms of license fee. Instead the telecom services provided to the end users on the said infrastructure only should be subject to license fee.

Infrastructure resource development needs to be encouraged by ensuring that:

a. Duplication of resources is avoided
b. Optimally utilised (amongst Carriers)
c. Should not be artificially taxed (license fee) at par with services.
d. Incentivized by allowing carriers to treat its cost as a valid deduction from AGR for license fee purposes irrespective of the fact as to who creates it. A greater sharing of infrastructure leads to more optimality in its utilisation.

There is no significant relationship between Double Taxation and the need for Revenue Neutrality and Outsourcing Model used by various operators. It is pertinent to mention that as there are different categories of licenses offering different services, the aspect of revenue neutrality may not be the ideal benchmark in this matter. Taxing an infrastructure cannot be a rationale to ensure revenue neutrality.

Today carriers are allowed to take deduction on the call by call charges they pay for interconnection. Allowing a deduction of bandwidth cost while computing AGR for purpose license fee payments, will not signifies imbalance in the revenue of Carriers or their contribution to the exchequer., but will signify that the infrastructure is incentivised for better service offerings. Hence, there seems to be no significant relationship between Revenue Neutrality and Outsourcing insofar as Double Taxation is concerned.

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The outsourcing model being used by other operators is not relevant in the context of double taxation. This is because of the following primary reasons:

a. The bandwidth leased is not in the form of outsourcing but using infrastructure to provide services.
b. The cost incurred by operators who outsource some of their functions to third parties is not bandwidth cost. Instead these are technical / OSS/BSS related functions which are not directly involved in providing services. Bandwidth is the main infrastructure cost which enables creation of data enabled services.

Therefore, in the interest of creation and optimum utilisation of infrastructure related to bandwidth in order to provide affordable services, Hon'ble Authority may consider recommending deduction of such cost from AGR for license fee purposes.

Currently, double levy exists as certain payment made for inputs, like bandwidth, port etc., are not allowed as deductions while calculating the AGR on which LF is payable by a TSP and only the pass through charges for interconnection and roaming is a permissible deduction. This is even when the bandwidth provider is already paying LF on the revenue received from other TSP, which is leading to double levy.

- The concept of the current regime of pass through charges being only "*call based charges*" deduction needs to be revised in the era of convergence and extended to all kinds of converged services viz voice, data etc. offered under the different licences.

- It may be worth noting that the call based charges principle of determining pass through charges were established on the premise that where TSPs were providing switched / TDM based voice service. This scenario is quite different now as world over including India, the technology is witnessing a shift from TDM to IP/ data wherein, bandwidth is a key cost.

- TSPs are encouraged to increase infrastructure sharing, hence one needs to move from call-based charges to charges / cost relating to bandwidth / leased line cost and allow such costs as pass through to avoid double levy.

Hence the need is to allow deduction for charges paid amongst the licenced TSPs as a valid deduction from GR to arrive at AGR for license fee payment purposes which will also help avoid any incidence of double levy of license fees;

Currently, multiple levy exists as certain payment made for inputs, like bandwidth charges, are not allowed as valid deductions while arriving at the AGR on which LF is payable by a TSP and only the pass through charges for voice call based pass through / interconnection is allowed. Such transactions are necessary **telecom input** resources to provide service under the Licence, when the bandwidth provider is subject to LF on the revenue received from other TSP and thereby leading to double levy.

The National Telecom Policy 2012 (NTP 2012) (Clause 3.1) has highlighted the need to move towards convergence between services, networks and devices and orient, review and harmonise the legal, regulatory and license framework to enable seamless delivery of converged services.

3.1. To orient, review and harmonise the legal, regulatory and licensing framework in a time bound manner to enable seamless delivery of converged services in a technology and service neutral environment. Convergence would cover:

3.1.1. Convergence of services i.e. convergence of voice, data, video, Internet telephony (VoIP), value added services and broadcasting services.

3.1.2. Convergence of networks i.e. convergence of access network, carriage network (NLD/ ILD) and broadcast network.

3.1.3. Convergence of devices i.e. telephone, Personal Computer, Television, Radio, set top boxes and other connected devices. *(*Emphasis supplied*)*

Accordingly, there is urgent need to review this current concept of pass through charges which is only restricted to voice "*call based charges*". This is important in the era of convergence. If the current regime is not broad based by allowing bandwidth cost as a valid deduction; this will continue to result in double taxation which will impede competition and impact affordability at the hands of consumer.

It is recommended that revenue share adjustment should be on all the charges paid by one licensed TSP to the other licensed TSPs, so that there is an avoidance of double license fee payment.

In summary:

- The concept of the current regime of pass through charges being only voice / TDM based "call based interconnection charges" deduction needs to be revised in the era of convergence.
- Currently, only interconnect and roaming charges are eligible for deduction for computation of AGR. To avoid incidence of double levy of license fee it is recommended that the entire input costs paid to the other licenced TSP should be allowed for deduction in computing the AGR.

With the above background, we now provide our responses to the issues raised in the consultation in-seriatum.

at&t

Annexure - I

Comments of AT&T: TRAI Consultation Paper [No. 09/2014 dated July 31, 2014] on Definition of Revenue Base (AGR) for the Reckoning of License Fee and Spectrum Usage Charges

Q1: Is there a need to review/ revise the definition of GR and AGR in the different licences at this stage? Justify with reasons. What definition should be adopted for GR in the Unified Licence in the interest of uniformity?

Yes, there is a need to review /revise the definition of GR and AGR in the different licenses. In fact it is absolutely pertinent and apt from a timing perspective to review and revise the definition of GR and AGR in the different licenses at this stage. The importance and need has already been explained in the previous paragraphs.

There are various anomalies in the current definition of GR and AGR under the telecom licenses:

- It includes several revenues unrelated to licensed activities under the licence.
- It includes service items that strictly do not fall under the definition of revenue.
- It results in dual charge of the same revenues twice in the hand of different operators.
- It includes notional income that is unrealized/remains uncollected by the Licensee.
- It includes item on accrual/billed basis but allows deduction on collected/paid basis.
- It includes several items of pass through revenues resulting in differential treatment of similar revenue.

Hon'ble Authority while providing recommendations on Unified License in April 2012 has somehow not addressed the issue of defining the components of GR/AGR for levying license fee stating – "***Regarding the revenue which shall be taken into account for calculating GR/AGR for levying license fee, the Authority has not proposed any change in the definition of GR/AGR as the issue requires deeper study***" (Emphasis supplied).

Unified License has already been issued and we understand that the work on Phase II of Unified License is in progress within DoT. So it is important that when the terms and conditions of a new license have been written, it is important that the previous aberration in the definition of GR/AGR that exists in the current licenses needs to be reviewed and addressed, particularly in phase II of Unified License.

The definition of GR/AGR for payment of license fee needs to be reviewed to ensure level playing field among the service providers.

Streamlining the definition of GR/AGR has direct relation to the affordability of services to the end customer as well as the financial / business viability of a service provider.

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The current definition subjects all sources of revenue (telecom and non-telecom) accrued to the licensee company to license fee. Also the permissible deductions are restricted only to switched voice based pass through charges (interconnection), service and sales tax paid. It does not accord similar treatment for providing data services under the same license.

We are of the firm view that for license fee payment purposes the definition of revenue base should consider revenues accrued only from telecom sources / derived on the strength of telecom license or activities which can be directly attributable to a telecom license.

Interconnection cost should also consider payment made for input bandwidth charges which forms an integral part of data services. This will eliminate the issue of **multi stage assessment of license fee** which is currently in vogue and severely impedes competition in the enterprise services and data sector. Therefore, input cost (i.e. interconnection / IUC and bandwidth cost for voice and data respectively) should be allowed for deduction while calculating AGR.

Yes, we believe that there is a need for review of the present definition of GR and AGR to align with the stated policy of the government and National Telecom Policy (NTP-12).

Furthermore, The NTP-12 has also envisaged that regulatory levies/taxes may be rationalized to provide a stable fiscal and regulatory regime to stimulate investments and making the services more affordable. Considering the present poor financial position of the telecom industry and to ensure the sustainable growth of the industry, there is a need to align the present definition of GR and AGR with industry requirements.

We believe that under the Unified Licensing regime, the definition of revenue base should be adopted in such a manner which may only considered the revenue realized from subscriber i.e. final products/network services as an end user for the purpose of computation of license fee payable and moreover it will also avoid the multistage license fee on the same service.

Q2: What should be the guiding principles for designing the framework of the revenue sharing regime? Is the present regime easy to interpret, simple to verify, comprehensive and does it minimize scope for the exercise of discretion by the assessing authority? What other considerations need to be incorporated?

The guiding principle should be as explained in the aforesaid paragraphs. Since the license is governed under section 4 of ITA, 1885, all its constituents should also be governed accordingly. This means that revenue from all activities which requires a telecom license to undertake should only qualify for a revenue sharing regime. Revenue from other activities which do not require a telecom license or do not come under the ambit of ITA 1885, should not be subjected to any share.

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Therefore the following guiding principle should be followed which will eliminate the need for any subjectivity in the current framework.

i. Only revenue from service under the license to be part of Revenue Base
ii. Avoidance of double ley of regulatory fees should be eliminated
iii. Exclude the items which are not in the nature of revenue and are not derived on the strength of the underlying telecom license.

The basic rationale adopted by the Government as mentioned in the consultation paper, included below is appropriate:

- easy to interpret
- simple to verify
- be comprehensive and minimise scope for the exercise of discretion by the assessing authority.

Q3: In the interest of simplicity, verifiability, and ease of administration, should the rate of LF be reviewed instead of changing the definitions of GR and AGR, especially with regard to the component of USO levy?

Yes, the rate of license fee especially the USO levy which is a major portion (5%) needs to be significantly reduced. TRAI in its recommendations on Unified License dated October 2003 has noted that the license fee should cover USO (5%) and administrative cost (1%) in contrast to 3% currently. The license fee has been significantly reviewed from 15% to 8% currently. However, the USO levy has remained consistent at 5%. TRAI in its October 2003 recommendation has noted that the license fee should be in the form of an administrative cost which is to take care of managing, licensing and regulating the sector. On the USO levy TRAI stated that with technological developments, flexibility in the licensing regime, deployment of more and more wireless technologies and the growth of telecom services even in backward areas from telecom point of view, the Government may consider reviewing the level of USO levy and Administrative fee.

The National Telecom Policy 2012 has stated:

12.3. To rationalise taxes, duties and levies affecting the sector and work towards providing a stable fiscal regime to stimulate investments and making services more affordable. *(*Emphasis Supplied*)*

Therefore it is the need of the hour to gradually reduce the license fee starting with immediate phase wise reduction of USO levy. The USO fund has been primarily not been efficiently utilized. The same needs to be reduced to 1% to start with and gradually brought to a level that brings affordability in the sector.

This will certainly help the sector improve its financial viability by reduction of cost leading to affordability at the hands of the consumers.

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Q4: If the definitions are to be reviewed/ revised, should the revenue base for levy of licence fee and spectrum usage charges include the entire income of the licensee or only income accruing from licensed activities? What are the accounting rules and conventions supporting the inclusion or exclusion of income from activities that may not require license?

The revenue base should factor only those activities which require a telecom license to undertake. Any other income / credits in the profit and loss account of the TSP should not be included in the AGR. The accounting rules are clear in respect, for example, of the reversals of the provision of bad debts, reversal of the excess liabilities created in the earlier years, foreign exchange fluctuation gains etc. which, by any stretch of imagination cannot be termed as a 'revenue. Likewise, any interest or dividend earned cannot be termed as a revenue as they do not arise under the activities carried under the license.

Going by the basic rationale mentioned in the consultation paper is that the framework should be - easy to interpret, easy to verify, to be simple yet comprehensive.

Q5: Should LF be levied as a percentage of GR in place of AGR in the interest of simplicity and ease of application? What should be the percentage of LF in such a case?

The license fee be levied as a percentage of AGR to factor the various underlying legitimate inter operator payments whereby the consumer can get access to various services. The percentage of LF in such case should be on the same principle as recommended by TRAI in October 2003. It is an accounting principle that revenue should be recognized after adjusting the underlying costs. Therefore AGR based model as against GR should be adopted. Cost reimbursement or cost credit should not be viewed as revenue by DOT; these are purely cost adjustment presented under the expense category in the audited financial statements

Q6: Should the revenue base for calculating LF and SUC include 'other operating revenue' and 'other income'? Give reasons.

The revenue should only factor income or sources of revenue which are derived based on activities requiring a telecom license. All other income which are derived from activities not requiring a telecom license should be excluded. Therefore other operating income or other income which has not been derived or cannot be directly attributable to the underlying telecom license should not be included.

Q7: Specifically, how should the income earned by TSPs from the following heads be treated? Please give reasons in support of your views.

In the matter of specific heads of revenue / income under the consultation please find our submissions as below:

(a) Income from dividend;
Need to be excluded from the revenue base for LF purposes.

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The mention of these terms in present definition in Licenses means that any income from interest/dividend which is arising from licensed activity and not from non-licensed activity.

Generally, interest and dividend could be a revenue stream for any business entity. To earn interest / dividend, it does not require a telecom licence. Interest and dividend are earned on account of a non-telecom activity viz. investment of idle cash in deposits and securities. The treasury function of every company undertakes fund requirement and fund management activities. These are the cash management team which not only manages the Capital requirements but is also entrusted with the duty of not keeping the money idle.

As the money has time value, any surplus is either invested back in the business or is kept at a place which keeps it optimizing. To avoid keep idle cash balances (as money has time value), this gets invested into financial instruments. Most (if not all) TSPs have significant debt on the balance sheets for which they make thousands of crores of interest payments each year – such activity in fact earns negative returns. Also, cash margins maintained by the licensees with banks who issue bank guarantee in favor of the DOT and other agencies/ parties pursuant to the license agreement and / or other contracts, also earn interest. Simultaneously the company pays commission on bank guarantees. Due to timing issues of fund flows/outflows it is very natural for TSPs to have temporary investment/deposits which consequently earn interest/dividend. It is perverse that the interest cost in disallowed as deduction but the interest income is chargeable to tax.

Sometimes these surplus funds are generated from the profits made from sale of telecom services and are therefore generated after paying all legitimate taxes and telecom levies. Since the revenues have already suffered regulatory taxation it will be perverse to double tax the gains on the revenues again in the form of LF on interest/dividend income. This is akin to levying both a Sales Tax and Income Tax at the same time (with the rider that that the Income is only interest income and not any offset for interest costs).

These items of gains should not be considered as revenue for the purpose of levy of License fees for the reasons:

- These are not revenues from rendering services but are gains recognized under the head "Other Income"
- The Income has got no relationship with rendering of Licenced services.

The authority itself vide its recommendation dated 21 September 2006 has recommended that as such revenues / gains; a) does not arise from the rendering of services b) are accounted for separately and c) can be verified separately hence it should not form part of the GR.

(b) Income from interest;

Need to be excluded from the revenue base for LF purposes.

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(c) Gains on account of profit on assets and securities;
Need to be excluded from the revenue base for LF purposes.

(d) Income from property rent;
Need to be excluded from the revenue base for LF purposes.

(e) Income from rent/ lease of passive infrastructure (towers, dark fibre, etc.);
Need to be excluded from the revenue base for LF purposes.

(f) Income from sale of equipment including handsets;
Need to be excluded from the revenue base for LF purposes.

(g) Other income on account of insurance claims, consultancy fees, foreign exchange gains etc;
Need to be excluded from the revenue base for LF purposes.

As a basic rule, incomes / revenue which have got no nexus with Licence should not come under the definition of revenue. Accordingly we explain below the reason for one of the critical item, as below:

Gains due to Foreign exchange fluctuations:

Forex gains result when liabilities for payment in foreign exchange decrease on account of appreciation of domestic currency vis-à-vis foreign currency. The Forex gains generally result on account of revaluation of foreign exchange reserves lying in bank accounts, revaluation of provisions made for overseas vendors etc. and their gains or losses are notional and remain unrealized. The gains should not be included in the AGR as these are beyond the control of operators. It is also worth mentioning that no set off is given in the eventuality of loss on account of foreign exchange fluctuation. The gain is accrued not because of any planned intervention by operators. The gain results based on the fluctuations in the forex market due to various macro-economic factors on which the operators do not have any control.

Further, the Forex Gain/Loss cannot be regarded as Revenue and be subject to license fee due to the following reasons:

- Forex Gains and losses are dynamic and indeterminable. In addition forex gains arising on account of telecom services cannot be considered as Revenue, since at any point of time, while the value of Rupee may appreciate against one set of currencies, it may also depreciate in value vis-à-vis another set of currencies. Over a period of time this would change in a dynamic way such that gains may offset losses.

- Licensee has no control on the forex prices and their movements as these are based on macro -economic factors. While the **gains** are subject to license fee, forex **losses** are not considered as a deduction or set off under the current definition.

- Dealing in foreign exchange assets / liabilities do not require a telecommunication license from the DOT.

This may be certainly be looked into by not making forex gains subject to license fee and should give due cognizance to the forex losses.

Q8: What categories of revenue/income transactions qualify for inclusion in the revenue base of TSPs on 'net' basis? Please support your view with accounting/ legal rules or conventions.

The revenue realized from subscriber should only be considered for revenue base. It is also submitted that the revenue should be recognized as per industry best practices and accounting standards issued by the Institute of chartered accounts of India (ICAI) with the consultation of the National Financial Reporting Authority, Ministry of Corporate Affairs.

Q9: What are the mechanisms available for proper verification from the financial statements of TSPs of items/ income proposed to be excluded from the revenue base, especially for TSPs engaged in multiple businesses? Would new verification mechanisms be required?

In case the Government wants to verify the same, trust can be placed on the audited accounts of the TSPs in all such cases. It is submitted that the regime of self-certification and self-assessments should be promoted in line with other Financial laws / Acts e.g. Income Tax, Company Law etc.

Q10: What is the impact of new and innovative business practices adopted by telecom service providers and licensees on the definition of GR? What impact will exempting other income from the revenue base have on the verification mechanism to be adopted by the licensor?

There is no impact of the new and innovative business practices adopted by telecom service providers and licensees on the definition of GR if the definition of GR is clear and easy to interpret.

Q11: Do the potential benefits accruing to TSPs by moving from a simpler to a more complex definition of the revenue base (providing for additional exclusions) justify the additional costs of strengthening the assessment, accounting and monitoring system? Should the definition of AGR remain unchanged once the revenue base is reduced by providing for additional exclusions from the top line?

The current framework for audit and assessment is sufficient and there is no requirement for any additional over the top monitoring. The definition of AGR should be aligned with the principle stated in aforesaid paragraphs.

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Q12: Should minimum presumptive AGR be applicable to licensees? How should minimum presumptive AGR be arrived at?

We do not support any type of presumptive AGR framework.

Q13: Should minimum presumptive AGR be made applicable to access licensees only or to all licensees?

We do not support any type of presumptive AGR framework.

Q14: Should intra circle roaming charges paid to another TSP be treated as a component of PTC? If so,why?

We have not specific comments. However, principally all inter operator payments should be allowed as a PTC being the underlying cost.

Q15: How should the permissible deductions be designed keeping in view future requirements? Specifically, what treatment should be given to charges paid to IP-I providers in the context of the possibility of bringing them under the licensing regime in future?

Principally all in inter operator payments should be allowed as a PTC being the underlying cost.

Q16: Should the items discussed in paragraph 3.35 be considered as components of PTC and allowed as deduction from GR to arrive at AGR for the purpose of computation of license fee? Please provide an explanation for each item separately.

The following type of items should be considered charges and allowed as deduction from GR to arrive at AGR for the purpose of computation of license fee. In view of digital convergence, globally there has been a transition from TDM to IP in terms of technology resulting in a shift from voice to data.

Therefore it is imperative that the corresponding type of charges as below be recognized and allowed as valid deductions from the underlying service. In the context of IP / data services, leased / bandwidth charges are quite significant and needs to be allowed as a valid deduction.

Leased Line / Bandwidth Charges

- **Port Charges**
- **Cable Landing Station Charges**
- **Sharing of Infrastructure Services**
- **Interconnection Set-up Costs**
- **Roaming Signaling Charges**

Receipts from USO Fund – This should be excluded from Gross Revenue as this represents form of subsidy receipt as against a revenue derived under the license. In our view this is not in the nature of PTC or charges paid.

Q17: If answer to Q16 above is in the affirmative, please suggest the mechanism/audit trail for verification.

We note that presently licensees submit license-wise audited AGR statement along with details of Revenue, deductions and License-fee, on yearly basis. A reconciliation statement is also submitted, duly audited by statutory auditors of the licensee company, over and above, Licensee are also liable for number of other audits i.e. TRAI's audit, DoT's Special audit and C&AG's audit etc ,therefore, we believe that there is no need for any further mechanism in this regard.

Q18: Is there any other item which can be considered for incorporation as PTC?
Since we have recommended a regime where the revenue from the end user subscriber shall only be considered as "revenue base", therefore, we do not think the concept of pass through charges would be relevant.

Q19: Please suggest the amendments, if any, required in the existing formats of statement of revenue and license fee to be submitted by service providers.

The existing formats should be revised to reflect the principle stated above in terms of what should and should not form part of revenue base.

Q20: Is there a need to develop one format under unified license for combined reporting of revenue and license fee of all the telecom services or separate reporting for each telecom service as in present license system (as per respective license) should continue? If yes, please provide a template.

We would not recommend separate reporting for each telecom service as in the present license system as it still carries service specific distinctions and somehow does not reflect true and complete unification. We understand work on Phase II of unified license is underway. Unifying the definition should be considered if a unified licensee is allowed to provide any service using any infrastructure or network topology which goes beyond the current distinction of service specificity.

We understand that under the current unified license as it still carries service specific distinctions and somehow does not reflect true and complete unification, in such a situation it is very difficult to offer any suggestion on unification of format.

Q21: In case any new items, over and above the existing deductions, are allowed as deduction for the purpose of computation of AGR, please state what should be the verification trail for that and what supporting documents can be accepted as a valid evidence to allow the item as deduction.

All the deduction which are claimed by the TSPs are, in any case, certified by the auditors of the TSPs as being as per the regulation. As such, no additional verification trail is needed as it will make it very voluminous.

Q22: Is there is need for audit of quarterly statement of Revenue and License Fee showing the computation of revenue and license fee?

The current framework of yearly audit by the statutory auditors appointed under Section 139 of the Companies Act, 2013 should continue. We believe that there is no need for audit of quarterly statement of Revenue and License Fee, showing the computation of revenue and license-fee.

The present practice of accepting quarterly payments based on self-certification of Revenue& License fee statements may be continued with the requirement of annual audit by the statutory auditors and reconciliation to the audited financial statements.

Q23: If response to Q22 is in the affirmative, should the audit of quarterly statement of Revenue and License Fee be conducted by the statutory auditor appointed under section 139 of Companies Act, 2013 or by an auditor, other than statutory auditor, qualified to act as auditor under section 139 & section 148 of Companies Act, 2013 or by any one of them?

Not applicable in view of our comments as above.

However, it is submitted that the revenue statement should be audited by the same person who have audited the financial accounts of the company i.e. statutory auditor under section 139.

Q24: Is it desirable to introduce deduction of LF at source as far as PTC payable by one TSP/ licensee to another are concerned, in the interest of easy verification of deductions?

Yes. This can be an option. However this may lead to more administrative issues in terms of verifiability, reconciliation etc. Hence may be avoided. It would be helpful to allow deduction of input cost of bandwidth from GR to arrive at AGR for license fee purposes.

Q25: Is there any other issue that has a bearing on the reckoning of GR/ AGR? Give details.

We have no additional comments apart from above at this time.

* * * *

AT&T would be pleased to answer any questions on these issues.

Respectfully submitted,

Naveen Tandon

Naveen Tandon

September 15, 2014

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